IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.822 OF 2001

Sharad Joshi ...Appellant

vs.

The Municipal Corporation
of Greater Mumbai ...Respondent

Mr.Ranjit A. Thorat for the Appellant
Ms Geeta Joglekar for the Respondent-Corporation.

CORAM: A.S.OKA,J.
DATE : MARCH 14,2007.

ORAL JUDGMENT:

1. Heard Advocates for the parties. The Appellant is the Plaintiff. The Appellant filed a suit before the Trial Court for declaration that the notice dated 29th August 2000 issued under section 351 of the Mumbai Municipal Corporation Act,1888 (hereinafter referred to as the said Act of 1888) and order of demolition dated 3rd February 2001 passed on the basis of the said notice was illegal and bad in law. The Appellant had taken out a Notice of Motion for temporary injunction for protection of the suit structure. By impugned order dated 17th August 2001, the learned Trial Judge dismissed the Notice of Motion and vacated the earlier ad-interim order of status quo. The learned Advocate for the Appellant pointed out that on 27th September 2001 while admitting this Appeal, this Court passed interim order directing the parties to maintain status quo. He has tendered on record a copy of the Chamber Summons

No.1285 of 2004 taken out by the Appellant in the pending suit for amendment of the plaint. He submitted that the plaint was sought to be amended for placing reliance on letters dated 17th December 2003 and 28th May 2004 issued by the Officer of the Respondent-Corporation which record that the suit structure is a protected structure. He pointed out that the Trial Court permitted the amendment by allowing the Chamber Summons. He submitted that considering all the aspects, the suit structure deserves to be protected till the final disposal of the suit.

2. The learned Advocate for the Respondent opposed the Appeal by submitting that there is already a prima facie finding by the Trial Court that the suit structure is illegal. She submitted that it is for the Appellant to apply for regularisation of the suit structure.

3. I have considered the submissions. Ad-interim order of status quo passed by this court is operating from 27th September 2001. Perusal of the compilation filed by the Appellant tendered on record shows that there are two letters subsequently issued by the Respondent-Corporation stating therein that the suit structure is a protected structure. Both the said letters are issued after the impugned order was passed. The learned trial Judge has permitted the amendment of the plaint for the purposes of placing reliance on the said

letters. Prima facie, it appears to me that the letters relate to the suit structure. Considering the aforesaid subsequent development and considering the fact that ad-interim order granted by this Court is operating for considerably long time, suit structure deserves to be protected till the final disposal of the suit.

4. Hence, I pass the following order :

i) Parties are directed to maintain status quo as of today in respect of the suit structure till the final disposal of the suit.

ii) Hearing of the suit is expedited.

iii) All contentions of the parties on merits of the suit are expressly kept open.

iv) Appeal is accordingly disposed of.

JUDGE